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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Christopher Keith

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08/04/2009

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EXAMINER

OYEBISI, OJO O

ART UNIT

PAPER NUMBER

3696

MAIL DATE

DELIVERY MODE

08/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/802,223	KEITH, CHRISTOPHER	
	<b>Examiner</b>	<b>Art Unit</b>	
	OJO O. OYEBISI	3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/13/09, 06/05/09, 07/24/09</u> .                            | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/13/09 has been entered. In the RCE filed on 05/13/09, the applicant has amended claims 1-4, 6, 7, 10, 11, 17, 18, 23-26, 28, 29, 32, 33, 35-37 and 41, added claims 43-48, and claims 1-48 are currently pending.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 17-22, 37-39, and 41-42 rejected under 35 U.S.C. 102(e) as being anticipated by SAIAS et al (SAIAS hereinafter: Pub. No, 2003/0014379).

Re claim 17: SAIAS discloses a computer-implemented method of facilitating trading, comprising: automatically, at a market process, receiving a designation

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of anonymous from a first trading process, and automatically at the market process facilitating a trade between the first trading process and a second trading process by providing the second trading process with a rating for the first trading process, wherein the second trading process remains unaware of the identity of the first trading process and yet is able to obtain, from the market process, a rating for the first trading process, wherein the rating is descriptive of the first trading process as a trading party, and wherein the rating is based on a statistical analysis of the outcome of prior trades between the first and second trading processes, wherein the first and second trading processes and the market process are each software processes executing on a computer (see pg 21, paragraph 0310-0311, also see pg 22, paragraph 0317), and wherein one of the first and second trading processes is engaged in the trade as a buyer, and the other of the first and second trading processes is engaged in the trade as a seller (i.e., operates to automate the exchange of resources among entities pg 21 paras 0307-0308).

Re claim 18: SAIAS discloses a method of facilitating trading, comprising: automatically providing information to a preference updating process, and automatically deciding, at a software process executing on a computer, the software process being a first market participant whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference updating process( see pg 21, paragraph 0310-0311, also see pg 22, paragraph 0317-0318), the preference rating being

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descriptive of the second market participant as a trading party, wherein the information provided to the preference rating updating process is derived from analyzing the outcome of prior trades between the first and second market participants, and wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade, the trade resulting in an exchange of items between the market participants (i.e., automate the exchange of resources among entities pg 21 paras 0307-0308).

Re claim 37: Claim 37, though a system claim, recites similar limitations to claim 18 supra and thus rejected using the same art and rationale as in claim 18.

Re claims 19, 38: SAIAS further discloses a method as stated supra wherein the information comprises a rule for determining the preference rating of the second market participant (see pg 21, paragraph 0310-0311).

Re claims 20, 39: SAIAS further discloses a method as stated supra wherein the information comprises a rating (i.e., priority rating score) for the second market participants (see pg 27, paragraph 0407 to pg 28 paragraph 0409).

Re claim 21: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a platform process (i.e., the AM 108, see pg 21, paragraph 0310).

Re claim 22: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a market process (i.e., automated market, see pg 21, paragraphs 0306-0311).

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Re claim 41: SAIAS further discloses the computer-accessible medium wherein the data regarding the trade includes a trade price, and preference rating is based on comparing the trade price with a metric (see pg 22, paragraph 0320).

Re claim 42: SAIAS further discloses the computer-accessible medium wherein the metric is a market price at a time (see pg 22, paragraph 0319).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-16, 23-36, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over SAIAS in view of Defario (US PUB. No.: 20020004774), and further in view of Kane (U.S PAT: 6,317,728).

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Re claims 1, 40: SAIAS discloses a computer-implemented method of facilitating trading, comprising: under control of instructions executed by one or more computing devices of a computer system: automatically capturing data regarding a trade between two market participants that are each parties to the trade, wherein the trade results in an exchange of items between the market participants (i.e., Automated market operates to automate the exchange of resource among entities, pg 21 paras 0307-0308), and wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller (i.e., operates to automate the exchange of resources among entities pg 21 paras 0307-0308). Saias does not explicitly disclose automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged, and automatically updating a rating for each of the two market participant based on the determination of whether money was gained or lost from the trade. Defario discloses automatically determining from the captured data whether each of the market participants has gained money (i.e., a win) or lost money (i.e., a loss) from the trade in which they engaged (see paras 0072-0080). Defario fails to disclose automatically updating a preference rating for each of the market participant based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the two market participant is descriptive of the market participant as a trading party and is based on the outcome of trading

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between the two market participants. Kane discloses automatically updating, a rating for each of the two market participants (i.e., a cumulative merit process) based on the determination of whether money was gained or lost from the trade (see col.8, lines 35-67, also see col. 15, lines 5-10), wherein the rating for each of the two market participant is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants. Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to allow market participants to pick trading parties based on the parties' trading performance.

Re claims 23, 43: Claims 23 and 43, though system claims, recite similar limitations to claim 1 supra and thus rejected using the same art and rationale as in claim 1.

Re claims 2, 24, 44: SAIAS further discloses the method as stated supra wherein the rating is associated with the two market participants according to a rating scheme that is independently specified by each of the two market participants (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320).

Re claims 3, 25, 45: SAIAS further disclose the method wherein the rating is two-sided, each of the sides corresponding to how one of the two market participants rates the other of the two market participants (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320).



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Re claims 4, 26: SAIAS further discloses the method as stated supra wherein the rating is based on at least one threshold (i.e., price and quantity, see pg 22, paras 0318-0319).

Re claims 5, 27: SAIAS further discloses the method wherein the at least one threshold is supplied by at least one of the market participants (i.e., information and supplied by the participating entities, see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320).

Re claims 6, 28: SAIAS further discloses the method wherein the preference rating is also based on information supplied by at least one of the market participants (i.e., information and preferences supplied by the participating entities, see page 21, paragraphs 0310-0311).

Re claims 7, 29: SAIAS further discloses the method wherein the information comprises a rule for determining the preference rating during the automatic updating (see page 21, paragraphs 0310-0311).

Re claims 8, 30: SAIAS discloses a method wherein the information comprises a rating for the other market participants (i.e., priority rating score, see pg 27, paragraph 0407 to pg 28 paragraph 0409).

Re claims 9, 31: SAIAS further discloses the method wherein a market participant can designate itself as anonymous (see page 22, paragraph 0317).

Re claims 10, 32, 46: Neither SAIAS nor Defario explicitly discloses the method wherein the rating is used in determining whether to allow or prohibit a next trade between the market participants. However, Kane discloses the method

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wherein the rating (i.e., cumulative merit quotient) is used in determining whether to allow or prohibit a next trade between the market participants (i.e., the system monitors the success rate and failure rate of each agent and uses the merit quotient to control the power the agent wields in subsequent voting). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to allow market participants to pick trading parties based on the parties' trading performance.

Re claims 11, 33, 47: SAIAS further discloses the method wherein the data regarding the trade includes a trade price and the rating is based on comparing the trade price with a metric (see pg 22, paragraph 0320).

Re claims 12, 34, 48: SAIAS further discloses the method wherein the metric is a market price at a time (see pg 22, paragraph 0319).

Re claims 13, 35: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically updating occurs after the trade.

However, Kane makes this disclosure (see col. 13, lines 43-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for uninterrupted flow of trading process.

Re claims 14, 36: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically updating occurs at a predetermined time. However, Kane discloses the method as stated supra wherein the automatically updating occurs at a predetermined time (i.e., daily see col. 13, lines 43-47). Thus, it would have been obvious to one of

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ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for uninterrupted flow of trading process.

Re claim 15: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically capturing and updating are performed by a market process. However, Kane discloses the method as stated supra wherein the automatically capturing and updating are performed by a market process (see col.11, number 8, also see col. 13, lines 43-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for remote update of trading rules and settings.

Re claim 16: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically capturing is performed by a market process and the automatically updating is performed by a platform process. However, Kane discloses the method as stated supra wherein the automatically capturing is performed by a market process and the automatically updating is performed by a platform process (see col. 13, lines 37-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for remote update of trading rules and settings.

### ***Response to Arguments***

5. Applicant's arguments filed on 06/13/08 have been fully considered but they are not persuasive. The applicant argues in substance that neither Defarlo nor

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Kane discloses "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged," and "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants." Contrary to the applicant's assertion, Defarlo explicitly discloses "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged," (i.e., certain data about the trader's performance 32 is captured during this simulation and recorded in a multidimensional database 34. **This trader performance data includes maximum and minimum P&L (profit and loss),** maximum and minimum P&L times, P&L at the opening of the market, actual P&L, capital utilization and shares traded. After all analysis is finished, the data analysis system 10 takes the trade records and restructures the data into a standard multidimensional database 34. **This allows correlations of profit & loss, win ratio and a number of other measures to be made against any of the factors listed above.** As the system 10 builds a trade database 10 over time, a profile of trading behavior for each user will be created. **Users, i.e. individual traders or management of trading firms, will be able to see what factors are typically present when traders win and what factors have led to losing trades,** see paras 0079-0080). The examiner asserts that a data analysis system, as taught by Defarlo, performs the calculation of market participant's winning

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and losing positions (see paras 0079), which is akin to a software process executing on a computer system claimed by the applicant. The examiner further contends that a secondary reference, Kane, further discloses the limitation "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants." (i.e., the system monitors the success rate and the/or failure rate of each agents and grants each agent a cumulative merit quotient according to the cumulative rate of success and/or failure for the respective agent, see col.8 lines 35-50). Thus the cumulative merit quotient taught by Kane is tantamount to the preference rating disclosed by the applicant.

The applicant further argues that the agents disclosed by Kane are not market participants. This argument is predicated on the notion that Kane's agents only advise a trader, or market participant, on one side of a trade whether to enter into a trade and what position to take in the trade, and that Kane's agents do not enter into trades. Contrary to the applicant's assertion, the examiner maintains that Kane's system is fully automated wherein buy and sell decisions are made by intelligent agents (see the abstract), thus to say Kane's agents are not market participants, but only advise a trader, or market participant is inaccurate. Kane discloses a trading system wherein decision agents are set up to make a buy or sell decision based on their respective rules (col.1.5, lines 5-15, also see col.1.15 lines 5-20), each agent in Kane is a market participant. Thus, when an agent makes a buy decision, that agent is a buyer in the

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market, and when an agent makes a sell decision that agent is a seller in the market regardless of which side of the market the agents are on.

Lastly, the applicant argues in substance that SAIAS fails to show or suggest a preference rating from a market process. Contrary to the applicant's assertion, the examiner asserts that SAIAS explicitly disclose an automated market, which operates to automate the exchange of resources among entities (i.e., first trading process that participates in a trade with a second trading process) - please see SAIAS pg 21 paras 0307-0311. SAIAS further teaches as follows: "In the preferred embodiment, the AM 108 receives trading preferences computed by the economic agents and an optimization engine within the AM 108 finds the trade which maximizes the preferences of the participating economic agents. Specifically, the AM 108 allows economic agents such as organizations and firms to anonymously submit terms of a favorable exchange. Upon receipt of the trading preferences from the economic agents, the AM 108 reconciles compatible buyers and sellers. All of the terms that need to be negotiated are specified privately in a manner that incorporates the flexibility and often non-comparable utilities of the organization. Further, none of the surface will be available for inspection or analysis by any other market participant, or any third party. Since the AM 108 has the ability to receive preferences from economic agents which privately specify the range over which they are flexible on various terms, the present invention allows the negotiation process to be automated without publicizing the internal state of the participating economic agents." - see SAIAS pg 22, paras 0317. Clearly, SAIAS disclosure that "the AM 108 allows economic agents such as organizations and firms to

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anonymously submit terms of a favorable exchange, upon receipt of the trading preferences from the economic agents, the AM 108 reconciles compatible buyers and sellers", constitutes the applicants limitation in claim 17 "wherein the second trading process obtains a preference rating from a market process for the first trading process while being unaware of the identity of the first trading process." Further, contrary to the applicant's assertion that SAIAS terms are not directed to who is on the other side of the trade, the examiner asserts that SAIAS terms are directed to economic agents such as organizations and firms that engage in trade/exchange with one another. The applicant needs to understand that the party on the other side of the trade is either a buyer or a seller, and a party on one side of the trade is trading/exchanging with another party on the other side of the trade. So if this is true, SAIAS discloses economic agents that set preferences and based on these preferences the system reconcile compatible economic agents (i.e., buyers and sellers) - see SAIA above

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571)272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571)272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/OJO O OYEBISI/

Primary Examiner, Art Unit 3696